

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

The Michelin Retirement Plan and the  
Investment Committee of the Michelin  
Retirement Plan,

and

Chicago Transit Authority Retiree Health  
Care Trust,

Plaintiffs,

v.

Dilworth Paxson, LLP, et al.,

Defendants.

Case No.: 6:16-cv-03604-HMH-JDA

**PLAINTIFFS'  
STATUS REPORT**

Plaintiffs The Michelin Retirement Plan and the Investment Committee of the Michelin Retirement Plan (“Michelin”), and Chicago Transit Authority Retiree Health Care Trust (“CTA RHCT”) (together, “Plaintiffs”) submit this Status Report pursuant to the Court’s Order dated June 12, 2017 directing the parties to provide a status update (ECF No. 218). The Plaintiffs would respectfully submit that the current stay should be lifted and the matter proceed. Plaintiffs provide the following as to the status as relates to the stay:

**I. United States v. Jason Galanis, et al., 16 Cr. 0371 (R.A.) (S.D.N.Y.) (“Galanis”)**

At the time this Court issued the stay on June 12, 2017, Jason Galanis had entered a guilty plea, which included a monetary judgment and forfeiture in the amount of \$43,277,436.00 and was scheduled to be sentenced on August 11, 2017. (Galanis, ECF Nos. 124 and 177). As scheduled, Jason Galanis was sentenced on August 11 to approximately 14 years. (Galanis, August 16, 2017 Sentencing Order, ECF No. 229). Subsequent to the sentencing of Mr. Galanis,

the court issued a judgment against Mr. Galanis for restitution to victims in the amount of \$43,785,176.00. The Plaintiffs' portion of this restitution is listed on the judgment order in the amounts of \$8,102,154.00 and \$4,073,499.00, for Michelin and the CTA RHCT, respectively. (Galanis, August 28, 2017, ECF No. 233, name of victims filed under seal). On August 29, 2017, Mr. Galanis filed an appeal of his conviction and sentence. (Galanis, ECF No. 234). The appeal is now pending before the Second Circuit, United States Court of Appeals (*United States of America, Appellee, v. Jason Galanis, Appellant*, Case No.: 17-2713).

The Galanis case involves several Defendants who are also named in this action, including Defendants Michelle A. Morton, Devon D. Archer, Bevan T. Cooney, Hugh Dunkerley, Gary T. Hirst and John Galanis. These remaining Defendants are scheduled to begin trial on February 5, 2018 in the Southern District of New York before Judge Ronnie Abrams. (Galanis, March 3, 2017 Status Conference Minute Entry). To date Plaintiffs have received no relief as a result of Galanis' guilty plea and sentencing. Based on the appeal as well as discussions with the U.S. Attorneys' office, it does not appear that restitution is likely, certainly not in the near future. As such, the stay should be lifted as Plaintiffs' damages are unlikely to be satisfied by any further criminal judgments that may be entered.

**II. Securities and Exchange Commission v. Atlantic Asset Management, LLC,  
15 Civ. 9764 (WHP) (S.D.N.Y.) ("AAM")**

At the time this Court issued the stay on June 12, 2017, the court in the AAM action had approved a Third Revised Plan of Distribution (the "Distribution Plan") and had ordered the parties to submit status reports by September 15, 2017 identifying what steps, if any, remained to be taken to effectuate the Distribution Plan. (AAM, Apr. 24, 2017 ECF Nos. 198 and 199).

On June 6, 2017, the Receiver filed a Motion for approval of the distributable amount and to authorize the general distribution under the Distribution Plan. (AAM, ECF Nos. 217-218).

On June 9, 2017, the court issued an Order approving the distributable amount and authorizing the general distribution. (AAM, ECF No. 221). The total amount for general distribution was \$621,094.86 amongst thirty-six claimants. Plaintiffs were claimants and received a small percentage from the general distribution. Less than two percent of their losses.

On June 9, 2017, by Order of the Court, the Receiver was authorized to retain a law firm as special counsel to pursue insurance coverage. (AAM, ECF No. 220). One of the insurance carriers pursued was Hartford Fire Insurance Company (“Hartford”) in connection with a CrimeShield Policy for Mercantile Entities and a Financial Institution Bond for Investment Firms issued to Atlantic Asset Management, LLC. The Receiver and her counsel were unable to negotiate a resolution of claims against Hartford. Plaintiffs anticipate moving to amend the Complaint in this action to add AAM and Hughes Capital as Defendants.

On July 11, 2017, Hartford Fire Insurance Company (“Hartford”) filed a Motion for Leave to File a Declaratory Judgment action (AAM, ECF No. 224). Hartford sought declaration that the policy and bond are void and no coverage is afforded under either the policy or the bond for claims sought by the Receiver on behalf of the investors (including Michelin).

On August 3, 2017, a hearing was held before Judge William Pauley in the Southern District of New York to discuss the Hartford Motion. (AAM, ECF No. 228). As a result of the hearing, Judge Pauley issued a Scheduling Order requiring Hartford to file by September 8, 2017, either their Motion for Leave to File a Declaratory Judgment Action against AAM only or a declaratory judgment action naming the Receiver and each of the insured plans (including Michelin) as Defendants. On August 21, 2017, the court issued a Final Judgment as to Defendant Atlantic Asset Management, LLC. (AAM, ECF No. 247).

On September 8, 2017, in the Southern District of New York, Hartford filed its Complaint for Declaratory Judgment naming the Receiver and each of the insured plans (including Michelin) as Defendants in the action. Hartford Fire Insurance Company v. Marti P. Murray, et al., 17 Cv. 6855 (S.D.N.Y.). (Hartford, ECF No. 1). On September 15, 2017, Hartford requested and Michelin agreed to waive service of the Complaint. Pursuant to the Waiver, responsive pleadings in this action are due from Michelin on or before November 14, 2017.

Even with the estimated maximum possible proceeds from the Hartford policies, it is likely that more than 90 percent of Plaintiffs' collective damages will still be unsatisfied. Thus, further developments in the receivership proceedings do not provide any reason to continue to stay this action. Plaintiffs should be allowed to proceed with their civil claims against the remaining Defendants even while they pursue these alternate avenues of recovery.

### **III. Bevan Cooney Bankruptcy**

By Text Order dated August 18, 2017, in response to a Suggestion of Bankruptcy filed by Defendant Bevan Cooney the Court held that this action is automatically stayed under 11 U.S.C. 362(a) pending resolution of the bankruptcy case or further Order of this Court. Plaintiffs would submit that the automatic stay only applies to claims against Cooney and that the above captioned action should not be stayed as to the remaining Defendants. *McMahon v. George Mason Bank*, 94 F.3d 130 (1996); *Williford v. Armstrong World Indus.*, 715 F.2d 124, 126 (4th Cir.1983); *Credit Alliance Corp. v. Williams*, 851 F.2d 119, 121 (4th Cir.1988); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir.), *cert. denied*, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986).

*(Signature Page Follows)*

Respectfully submitted,

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